

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45

To: The Secretary

REPLY COMMENTS OF METROPOLITAN AREA NETWORKS, INC.

Metropolitan Area Networks, Inc. ("MAN"), a corporation involved in the development of new approaches to wireless technology, by its attorneys and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's (the "Commission") Rules, hereby submits its Reply Comments in the above-referenced proceeding.¹ In support thereof, MAN states as follows.

On January 29, 2008, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on the ways to reform the high-cost universal service program. Among the topics discussed in the NPRM, the Commission requests comment on the recommendation of the Federal-State Joint Board on Universal Service ("Joint Board") concerning the comprehensive reform of high-cost universal service support to include, among other changes, a Broadband Fund receiving universal service support.² MAN commends the Commission and the Joint Board for recognizing the critical importance of ensuring broadband

¹ The Reply Comment period has been extended to June 2, 2008. *See Order*, DA 08-1168 (rel. May 15, 2008).

² *Notice of Proposed Rulemaking* in WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd. 1531 (2008).

Internet services to unserved areas and submits these Reply Comments in support of the broadband initiatives set forth in the NPRM. MAN particularly supports the need for broadband Internet access to those rural areas where broadband is lacking, including Indian reservations and Tribal lands.

MAN concurs with the Commenters in this proceeding who have already indicated their support for the Joint Board's recommendation to include the universal availability of broadband Internet services as one of the nation's communications goals. MAN submits that establishing a Broadband Fund should aid in the dissemination of broadband Internet services to unserved areas and provide grants to enhance broadband service in areas with substandard or non-existent service. As OPASTCO noted in its Comments, "[m]obile wireless services and broadband Internet services are not ubiquitous like wireline voice services, and would benefit from separate funding mechanisms that, among other things, encourage service deployment in areas where those services are presently unavailable."³ MAN also concurs with the Joint Board's recommendation of a secondary purpose: "to provide continuing operating subsidies to broadband Internet providers serving areas where low customer density would suggest a plausible economic case cannot be made to operate broadband facilities, even after receiving a substantial construction subsidy."⁴

The Telecommunications Act of 1996 Supports the Inclusion of Broadband Internet as a Universal Service-funded Service

The principles set forth in the Telecommunications Act of 1996 anticipate that the Commission will adjust universal service support to further "advanced services." Specifically, Congress directed that the Joint Board and the Commission "*shall* base policies for the

³ Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, at 22.

⁴ NPRM, ¶ 12.

preservation and advancement of universal service" on certain enumerated principles, including the following: "Access to advanced telecommunications and *information services* should be provided in all regions of the Nation."⁵ Similarly, an overarching principle requires universal service support to ensure that consumers "in all regions of the nation, including low-income consumers and those in rural, insular, and high cost areas" have "access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."⁶ Thus, the Telecommunications Act of 1996 specifically requires the Commission to utilize universal service for the promotion of advanced information services to all regions, and to ensure that all consumers, including specifically those in rural, insular, and high cost areas, can access advanced information services.

Including broadband Internet within universal service support thus also furthers the goals of Section 706 of the Telecommunications Act of 1996, which directs the FCC to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."

Broadband Internet Service is an Essential Service and Should be Added to the Supported Services but be Technologically Neutral

While certain Internet access (dial up) services are presently supported by universal service, MAN agrees with the Joint Board, and urges that the Commission revise the current definition of supported services, specifically to include broadband Internet service as a supported

⁵ 47 U.S.C. § 254(b)(2) (emphasis added).

⁶ 47 U.S.C. § 254(b)(3).

service.⁷ As the Joint Board states, "broadband Internet services are essential to education, public health, and public safety." The supporting of dial up service through universal service funding is ineffective, as "classical dial-up Internet access is marginally useful, and is often inadequate."⁸ Universal service must support those services that have become critical to Americans and this includes advanced broadband services. Today, broadband Internet is more than an entertainment vehicle, it has become the platform for disseminating "an ever increasing amount of services essential to education, public health and safety."⁹ One need only consider the prevalence of broadband Internet in our schools, universities, and hospitals to confirm this observation. Commissioner Tate recently observed that "telecommuting for doctors makes the physical distance between provider and patient immaterial, and this ability to shrink distances that isolate our most remote communities makes broadband particularly critical in rural areas....In short, broadband revolutionizes how we communicate, how, where and when we work, how we educate our children, the delivery of healthcare and public safety, as well as how we entertain ourselves."¹⁰

The inclusion of broadband Internet access within the services supported by the Universal Service fund is long overdue. As Commissioner Copps noted in this proceeding, he has advocated for at least five years the inclusion of broadband services within universal service funding.¹¹ Commissioner Copps has correctly noted that the Joint Board's Broadband Fund recommendation represents "the most important single action a Joint Board has ever taken."¹²

⁷ NPRM, ¶ 56.

⁸ *Id.* ¶ 58.

⁹ *Id.* (Statement of Chairman Kevin J. Martin). *See also* Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part, ¶ 2 ("Copps Statement") ("the Joint Board's recommendation to include broadband in the definition of Universal Service finally puts the program in sync with the intent of the Act.").

¹⁰ "Broadband to the Home: Broadband to America," Speech of FCC Commissioner Deborah Taylor Tate to the Broadband Properties Summit, Dallas, Texas, Apr. 30, 2008 (available at www.fcc.gov)

¹¹ Copps Statement, ¶ 1.

¹² *Id.*

MAN concurs with Commissioner Copps that the Commission should move forward promptly in this proceeding and establish a Broadband Fund. The Commission needs to ensure that *all* Americans have access to broadband Internet services at reasonably comparable rates.

As the Commission implements a Broadband Fund, the Commission should not favor one broadband technology over another. Rather, recognizing that broadband Internet access may be provided by various methods, using different equipment and technologies, the Commission's policies should permit support through the Broadband Fund of different broadband Internet service providers and services as they develop over time. Given the rapidly changing broadband environment, the Commission should not be making any individual technology bets but should bet only on broadband itself.

Critical Needs of Tribal Reservations and Tribal Lands

The Commission has acknowledged that Indian reservations and Tribal lands remain underserved with respect to telecommunications and information services, "with some areas having no service at all."¹³ In its Comments in this proceeding, the National Tribal Telecommunications Association noted that "[t]wenty-nine percent of the people of the United States living on tribal lands do *not* have access to telecommunications and information services comparable to those in urban areas."¹⁴ Rural communities, particularly Tribal lands, desperately need access to broadband Internet services, to provide Tribal residents with information on such critical topics as health care, education, public affairs, and career opportunities. These needs are not being met. As the Government Accountability Office observed, the rural location of tribal lands and tribes' limited financial resources deter service providers from making investments in

¹³ "Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes," Policy Statement, 16 FCC Rcd. 4078, ¶ 1 (2000).

¹⁴ Comments of the National Tribal Telecommunications Association, WC Docket No. 05-337, CC Docket 96-45, at 17 (emphasis in original).

telecommunications on tribal lands. "This lack of investment can result in a lack of service, poor service quality, and little or no competition."¹⁵ For example, a representative for the company that provides service to the Coeur d'Alene tribe reported to the GAO that high speed Internet was only available in certain areas of the Coeur d'Alene tribal land, and that there were "no immediate plans to expand the service area, and that there were cost issues in providing service to the more remote and less densely populated part of the reservation."¹⁶ MAN agrees with those commenters who urge the Commission to reform the universal service funding to include broadband Internet access to these communities. As Chinook Wireless stated, "it is imperative to ensure predictable and sufficient universal service funding for rural communities in Alaska and elsewhere, including tribal lands and the many rural and remote communities in many states."¹⁷ We, like Chinook, agree with the Alaska Federation of Natives that:

"Without access to the advanced telecommunications and information services (including mobile wireless and broadband) that less remote communities enjoy, these 200 rural Alaska communities will be denied the economic, educational, public health, and public safety benefits that Congress intended the Fund to provide to rural America."¹⁸

Further, the General Services Administration, in a Report to Congress titled "Improving Access to the Internet," noted that "from multiple reports, as a group, the greatest disparities in Internet access are with Native Americans on reservations."¹⁹ The key factors inhibiting broadband Internet access in other areas of the country – lower education levels, unemployment and poverty levels – are magnified on Indian reservations as compared to national averages.²⁰ In fact, census data indicates that Native Americans living on Tribal lands "were among the most

¹⁵ "Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands," United States Government Accountability Office, GAO-06-189, Jan. 2006, at 35 ("GAO Report").

¹⁶ *Id.*

¹⁷ *Ex Parte* filing of Chinook Wireless, Feb. 22, 2008, at 7

¹⁸ *Ex Parte* filing of Alaska Federation of Natives, June 11, 2007 at 1.

¹⁹ "Improving Access to the Internet," A Report to Congress as required by the E-Government Act of 2002, General Services Administration, Jan. 24, 2005, at 21.

²⁰ *Id.*

economically distressed groups in the United States, with about 37 percent of Native Americans living below the federal poverty level."²¹ This is more than double the rate for the U.S. population as a whole.²²

A focus on Tribal lands would be consistent with the Commission's approach in other universal service rulemakings, where it specifically implemented rules targeting universal service support to low-income consumers on Tribal lands. As the Commission has stated, "[t]he advancement of universal service on tribal lands remains a major policy goal of this Commission."²³

We also recommend that the Commission consult with Tribal governments regarding the Broadband Fund. This approach is consistent with the Commission's *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, pursuant to which the Commission is to consult "prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources."²⁴ Such a consultation would assist the Commission in understanding the broadband needs of tribes and the infrastructure and services that could best be supported by the Broadband Fund to specifically target the "digital divide" on Tribal lands.

²¹ GAO Report, at 1.

²² *Id.*, at 9.

²³ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 18 FCC Rcd. 10958 (2003).

²⁴ Policy Statement at 4.

CONCLUSION

In today's society, access to broadband Internet services is critical to enabling consumers, businesses, educational institutions and others to access a broad range of essential and time-sensitive information. The Commission and the Joint Board have recognized that universal service support should be used to expand access to broadband Internet services for all Americans. MAN supports the establishment of a Broadband Fund. Further, the expansion of broadband Internet access through universal service support is necessary for those parts of the country that are not yet reached by broadband, such as Indian reservations and Tribal lands. These are remote and isolated areas that are not sufficiently served by broadband providers. Access to broadband services in such locations, spurred by universal service support, will further the Commission's goals of ensuring that Native Americans have the same opportunities that broadband Internet brings to Americans in urban and suburban areas. A focus on the deployment of broadband Internet on Indian reservations and Tribal lands is consistent with other efforts the Commission has made to advance universal service on Indian reservations and Tribal lands.

Respectfully Submitted

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